

BILL ANALYSIS

Senate Research Center

S.B. 1043
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Transportation & Homeland Security
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Drought conditions throughout Texas create an increased risk for wildfires. Five of the last 10 years have been designated as extreme fire seasons. The Texas Forest Service reports that over 90 percent of fires are caused by human factors. Additionally, wildfires pose a significant danger to communities and infrastructure; 80 percent of wildfires burn within two miles of a community. Highway and roadside areas are also particularly susceptible to fire and human misconduct.

According to the Texas Department of Insurance, smoking and discarded matches caused 2,904 outdoor fires in 2008 alone. When a burning cigarette or match is discarded out of a car window, a wildfire could start and spread quickly. Current law prohibits an individual from discarding litter or waste on or within 300 feet of a public highway, right-of-way, or on public or private property (Section 365.012, Health and Safety Code).

S.B. 1043 amends the Health and Safety Code by adding a new section which explicitly addresses the discarding of lighted materials. If a fire is ignited as a result of a discarded match, cigarette, or cigar, the misdemeanor offense is punishable by a fine not to exceed \$500, confinement in jail for no more than 30 days, or both a fine and confinement. The bill also provides an affirmative defense for controlled burning practices and requires operators of a public conveyance to post appropriate notice of the offense.

S.B. 1043 amends current law relating to the criminal penalty for the discarding of certain burning materials.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 365.012, Health and Safety Code, to read as follows:

Sec. 365.012. **ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES.**

SECTION 2. Amends Section 365.012, Health and Safety Code, by adding Subsections (a-1), (d-1), (p), (q), and (r) and amending Subsections (d) and (e), as follows:

(a-1) Provides that a person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(d) Provides that an offense under Subsection (a), (b), or (c), rather than an offense under this section, is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) Provides that an offense under Subsection (a-1) is a misdemeanor under this subsection if the litter or other solid waste to which the offense applies weighs less than 500 pounds or has a volume of less than 100 cubic feet and is punishable by:

- (1) a fine not to exceed \$500;
- (2) confinement in jail for a term not to exceed 30 days; or
- (3) both such fine and confinement.

(e) Provides that an offense under Subsection (a), (b), or (c), rather than an offense under this section, is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(p) Provides that it is an affirmative defense to prosecution under Subsection (a-1) that the person discarded the lighted litter in connection with controlled burning the person was conducting in the area into which the lighted litter was discarded.

(q) Requires the operator of a public conveyance in which smoking tobacco is allowed to post a sign stating the substance of Subsections (a-1) and (d-1) in a conspicuous place within any portion of the public conveyance in which smoking is allowed.

(r) Provides that if conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Subsection (a), the actor may be prosecuted only under Subsection (a-1). Provides that if conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Chapter 28 (Arson, Criminal Mischief, and Other Property Damage or Destruction), Penal Code, the actor may be prosecuted under Subsection (a-1) or Chapter 28, Penal Code, but not both.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2011.